

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

SECOND APPEAL NO.423 OF 2005

V.Narayanan ..Appellant

Vs.

Shri.Ranjan Tyagi and Ors. ..Respondents

.....
Mr.R.S.Datar for Appellant
Ms.Latika H.Belindage for Respondent No.1
.....

CORAM : B.H.MARLAPALLE, J.

DATE : APRIL 19, 2005

P.C.:

1. Heard Mr.Datar, the learned counsel for the Appellant and Mrs.Latika Belindage, the learned counsel for the Respondent no.1-Caveator.

2. The Respondent no.1 had filed R.C.S.No. 546 of 1998 against the present appellant as Defendant no.1 and Respondent nos.2 to 4 as defendant nos.2 to 4, praying for declaration that the NOC issued by the Respondent No.2 in favour of the Appellant for alteration work was illegal. The learned Civil Judge J.D. at Vashi was pleased to dismiss the suit on 25.3.2004. The Plaintiff therefore, filed Civil Appeal No. 73 of 2004 in the District Court at Thane and the Jt.District Judge allowed the appeal vide his

judgment dated 25.3.2005 and hence, this Second Appeal.

3. The learned Jt.District Judge held that the suit was not maintainable against the Respondent-Corporation and also against the Respondent nos.3 and 4. These findings are not in conflict with the findings recorded by the trial Court. However, on sifting the evidence, the lower appellate Court recorded a finding that the Appellant had proceeded with the subject construction illegally and unauthorisedly, for the reasons that the permission from the Corporation was not obtained as required under Section 45 of the Maharashtra Regional Town Planning Act and though CIDCO had issued a letter intimating No Objection to the proposed construction but it was a conditional communication. It was also noticed that the Appellant had first constructed the suit rooms and subsequently applied for regularisation and the said application is pending even as at present. Under these circumstances, there is no substantial question of law that requires consideration in this Second Appeal and more so, the factum of not obtaining permission as required under Section 45 of M.R.T.P. Act, had not been disputed.

4. However, in the operative part of the order on

one hand, the lower appellate Court has directed to remove the illegal portion of the Row House within six weeks and on the other hand, the Corporation has been directed to hear the Appellant for regularisation of the construction. Both these directions are conflicting to each other. Hence, while dismissing the Second Appeal in limini, it is necessary to direct the Corporation to decide the application within a fixed period and protect the construction during that period. In case, the permission is refused, the decree passed by the lower appellate Court would operate.

5. In the premises, the Second Appeal is dismissed in limini. The Corporation (Respondent No.3) is hereby directed to decide the Appellant's pending application, as per law, within a period of eight weeks from today and if the said application is rejected, the decree passed by the lower appellate Court shall be enforceable.

6. Writ to go forthwith to the Respondent No.3.

[B.H.MARLAPALLE, J.]